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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0376-MWD-E TCEQ ID: RN101611275 CASE NO.: 32893
RESPONDENT NAME: City of Wichita Falls

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Wichita Falls, Located immediately south of River Road and approximately 1,000 feet northeast of the intersection of River Road and Rosewood Street, Wichita Falls, Wichita County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 1, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Catherine Albrecht, Enforcement Division, Enforcement Team 1, R-12, (713) 767-3672; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Darron J. Leiker, City Manager, City of Wichita Falls, Post Office Box 1341, Wichita Falls, Texas 76307; Mr. Scott Taylor, Director of Public Works, City of Wichita Falls, Post Office Box 1341, Wichita Falls, Texas 76307 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 4, 2007</p> <p>Date of NOE Relating to this Case: January 8, 2007 (NOE)</p> <p>Background Facts: This was a enforcement follow-up investigation. One violation was documented.</p> <p>WATER</p> <p>Failed to provide an operator who is licensed not less than one level below the category for the Facility for each shift not having on-site supervision of the licensed chief operator [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System Permit ("TPDES") No. 10509001, Other Requirement No.1].</p>	<p>Total Assessed: \$4,825</p> <p>Total Deferred: \$965 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$3,860</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 60 days after the effective date of this Agreed Order, commence providing a minimum of a Class "B" wastewater licensed operator for each shift without on-site supervision by the Class "A" licensed chief operator as required by TPDES Permit No. 10509001, Other Requirement No. 1; and</p> <p>b. Within 75 days after the effective date of this Agreed Order, submit written certification, including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

DATES	Assigned	22-Jan-2007	Screening	9-Mar-2007	EPA Due	
	PCW	15-Mar-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Wichita Falls
Reg. Ent. Ref. No.	RN101611275
Facility/Site Region	3-Abilene
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	32893	No. of Violations	1	
Docket No.	2007-0376-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Catherine Albrecht	
Multi-Media		EC's Team	EnforcementTeam 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 43% Enhancement **Subtotals 2, 3, & 7** \$1,075

Notes The Respondent has one NOV for same or simulation violations, six NOVs for other violations, three self-reported effluent violations, and one Agreed Order with a denial of liability.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Subtotal 6 \$1,250

Total EB Amounts \$16,800
Approx. Cost of Compliance \$10,000

50% Enhancement*

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$4,825

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$4,825

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$4,825

DEFERRAL 20% Reduction **Adjustment** -\$965

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY \$3,860

Screening Date 9-Mar-2007

Docket No. 2007-0376-MWD-E

PCW

Respondent City of Wichita Falls

Policy Revision 2 (September 2002)

Case ID No. 32893

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101611275

Media [Statute] Water Quality

Enf. Coordinator Catherine Albrecht

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	9	18%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 43%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has one NOV for same or similar violations, six NOVs for other violations, three self-reported effluent violations, and one Agreed Order with a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 43%

Screening Date 9-Mar-2007

Docket No. 2007-0376-MWD-E

PCW

Respondent City of Wichita Falls

Policy Revision 2 (September 2002)

Case ID No. 32893

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101611275

Media [Statute] Water Quality

Enf. Coordinator Catherine Albrecht

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System Permit ("TPDES") No. 10509001, Other Requirement No. 1

Violation Description

Failed to provide an operator who is licensed not less than one level below the category for this facility for each shift not having on-site supervision of the licensed chief operator. Specifically, a Class "B" licensed wastewater operator was not provided for all shifts not having on-site supervision by the Class "A" licensed chief operator.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to provide an adequate number of Class "B" licensed wastewater operators could result in the exposure of a significant amount of contaminants which may not exceed levels protective of human health and the environment.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

64 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the investigation date of January 4, 2007 to the screening date of March 9, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$16,800

Violation Final Penalty Total \$4,825

This violation Final Assessed Penalty (adjusted for limits) \$4,825

Economic Benefit Worksheet

Respondent: City of Wichita Falls
Case ID No.: 32893
Reg. Ent. Reference No.: RN101611275
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering Item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel	\$10,000	10-Apr-2006	15-Nov-2007	1.6	\$800	\$16,000	\$16,800
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated costs of employing an additional Class "B" wastewater operator. Date required is the date of the previous investigation. Final date is the projected date of compliance.

Approx. Cost of Compliance

\$10,000

TOTAL

\$16,800

Compliance History

Customer/Respondent/Owner-Operator:	CN600129316	City of Wichita Falls	Classification: AVERAGE Rating: 6.45
Regulated Entity:	RN101611275	CITY OF WICHITA FALLS	Classification: AVERAGE Site Rating: 0.62
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	2430001
	WASTEWATER	PERMIT	WQ0010509001
	WASTEWATER	PERMIT	TPDES0047686
	WASTEWATER	PERMIT	TX0047686
	PRETREATMENT	PERMIT	WQ0010509001
	PRETREATMENT	EPA ID	TX0047686000
	WATER LICENSING	LICENSE	2430001
	WASTEWATER LICENSING	LICENSE	WQ0010509001

Location: Located immediately south of River Road and approximately 1,000 feet northeast of the intersection of River Road and Rosewood Street in Wichita Falls, Wichita County

Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: March 12, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 12, 2002 to March 12, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Catherine Albrecht Phone: (713)767-3672

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 04/29/2006 ADMINORDER 2005-1507-PWS-E
 Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)(A)(i)
 Description: Failed in testing and certifying backflow prevention assemblies.

B. Any criminal convictions of the state of Texas and the federal government.
 N/A

C. Chronic excessive emissions events.
 N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 03/15/2002 (183034)
- 2 04/22/2002 (183039)
- 3 05/17/2002 (183043)
- 4 06/21/2002 (183047)
- 5 07/17/2002 (183051)
- 6 08/16/2002 (8499)
- 7 08/22/2002 (183055)
- 8 09/23/2002 (183058)
- 9 09/27/2002 (11932)
- 10 10/24/2002 (183061)
- 11 11/15/2002 (16804)
- 12 11/20/2002 (183065)
- 13 12/27/2002 (183069)
- 14 01/23/2003 (183073)
- 15 02/17/2003 (25103)
- 16 02/28/2003 (183032)
- 17 03/18/2003 (183035)
- 18 04/16/2003 (33877)
- 19 04/18/2003 (183040)
- 20 05/18/2003 (183044)
- 21 06/18/2003 (183048)
- 22 07/11/2003 (143013)

23 08/14/2003 (183052)
 24 08/20/2003 (305867)
 25 09/19/2003 (305869)
 26 10/07/2003 (305871)
 27 10/07/2003 (305874)
 28 11/20/2003 (305872)
 29 12/22/2003 (305873)
 30 01/29/2004 (261165)
 31 02/19/2004 (305857)
 32 03/24/2004 (305859)
 33 04/22/2004 (305860)
 34 04/29/2004 (305865)
 35 05/18/2004 (305862)
 36 06/21/2004 (356329)
 37 08/17/2004 (356330)
 38 08/30/2004 (292870)
 39 09/25/2004 (356331)
 40 10/25/2004 (356332)
 41 10/25/2004 (356333)
 42 12/21/2004 (384199)
 43 01/28/2005 (344935)
 44 02/08/2005 (384197)
 45 02/08/2005 (384198)
 46 02/22/2005 (384195)
 47 03/18/2005 (384196)
 48 04/08/2005 (376774)
 49 08/12/2005 (404906)
 50 05/19/2006 (462025)
 51 05/31/2006 (465240)
 52 08/02/2006 (489813)
 53 10/17/2006 (516442)
 54 01/08/2007 (535698)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/30/2002 (183043)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2002 (183055)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

Date: 08/06/2002 (7102)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: OP WQ0010509-001
 Description: Failure to prevent the discharge of wastewater into or adjacent to waters in the state at any location not permitted as an outfall.

Date: 08/16/2002 (8499)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(j)[G]
 Description: Failure to conduct and document customer service inspection activities.

Date: 08/27/2004 (292870)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)(A)(i)
 Description: Failed in testing and certifying backflow prevention assemblies.

Date: 01/28/2005 (344935)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 315, SubChapter A 315.1
 40 CFR Chapter 403, SubChapter N, PT 403.403.8(f)(5)
 Description: Failure to take formal enforcement action against noted violations per the enforcement response guide/plan for the three detailed violations.

Date: 01/31/2005 (384195)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

Date: 05/19/2006 (462025)
 Self Report? NO Classification: Moderate
 Citation: TWC Chapter 26 26.121(a)(1)

Rqmt Prov: PERMIT WQ0010509-001

Description: Failure to prevent unauthorized discharges of wastewater.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT WQ0010509-001

Description: Failure to accurately report flow composite records for biomonitoring samples.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)

Description: Failure to calibrate the laboratory thermometers annually against a National Institute of Standards and Technology (NIST) traceable thermometer.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT WQ0010509-001

Description: Failure to provide an operator who is licensed not less than one level below the category for this facility for each shift not having the on-site supervision of the licensed chief operator.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.11(c)

Description: Failure to conduct comparability data for ammonia nitrogen analyses when using the selective electrode method.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT WQ0010509-001

Description: Failure to accurately complete discharge monitoring reports.

Date: 05/31/2006 (465240)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)[G]

Description: Failure to conduct backflow testing procedures.

Date: 09/20/2006 (513035)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(B)

Description: Failure to maintain a total chlorine residual of 0.5 mg/L.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF WICHITA FALLS
RN101611275**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0376-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Wichita Falls ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment facility located immediately south of River Road and approximately 1,000 feet northeast of the intersection of River Road and Rosewood Street in Wichita Falls, Wichita County, Texas (the "Facility").
2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about January 13, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Four Thousand Eight Hundred Twenty-Five Dollars (\$4,825) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The City has paid Three Thousand Eight Hundred Sixty Dollars (\$3,860) of the administrative penalty and Nine Hundred Sixty-Five Dollars (\$965) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to provide an operator who is licensed not less than one level below the category for the Facility for each shift not having on-site supervision of the licensed chief operator, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System Permit ("TPDES") No. 10509001, Other Requirement No. 1, as documented during a record review conducted on January 4, 2007. Specifically, a Class "B" licensed wastewater operator was not provided for all shifts not having on-site supervision by the Class "A" licensed chief operator.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Wichita Falls, Docket No. 2007-0376-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Agreed Order, commence providing a minimum of a Class "B" wastewater licensed operator for each shift without on-site supervision by the Class "A" licensed chief operator as required by TPDES Permit No. 10509001, Other Requirement No. 1; and
 - b. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Brulien
For the Executive Director

8/23/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

5-1-07
Date

Darren J. Leiker
Name (Printed or typed)

City Manager
Title

Authorized Representative of
City of Wichita Falls

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

